

**SOLICITOR-CLIENT PRIVILEGE**  
**MEMO / NOTE DE SERVICE**



To / Destinataire      Mayor and Members of City Council      File/N° de fichier: n/a

From / Expéditeur      David White  
City Solicitor

Subject / Objet      Authority to Seize and Sell Vehicles      Date: February 24, 2022

The question has arisen regarding whether the City of Ottawa has the legal authority to take possession of and then sell the vehicles that were recently seized by police during operations associated with the convoy protests.

So as to not prejudice any potential law enforcement actions, this memorandum is being provided on a confidential basis.

For the reasons set out in more detail below, it is my considered view that there is no existing legal authority by which the City could lawfully take possession of the vehicles seized by police for purposes of sale or disposal by the City.

At issue are the vehicles that were recently towed and stored by law enforcement authorities during the course of their operations to bring an end to the blockading of City streets associated with the convoy protests. The police have recently advised that vehicles seized during the protests may be returned to their respective owners/operators. The question arises as to whether the City has any legal authority to itself seize and sell those vehicles in an effort to help defray the City's costs arising out of the protests.

At the outset, it should be noted that the authority in police to maintain possession of property seized during police operations is itself subject to legal constraints. Where police seize property, they retain discretion to return the property to the owner or to seek an order from the court detaining the property for use in any associated criminal proceedings (*Criminal Code of Canada s.490*) or proceedings under provincial law (*Provincial Offences Act s.159*). Where detained for use at trial, and on the resolution of any associated charges, the disposition of the property is at the direction of the court. There is no inherent authority in police to cause the property to be sold, unless prescribed by law.

The *Civil Remedies Act* provides certain rights to the Attorney General with respect to the administrative forfeiture of property that was the instrument of unlawful activity. If successful, property forfeited to the Crown in right of Ontario may be sold and the proceeds may be paid out for a number of purposes, including compensating municipalities for losses. This process must be instituted and litigated by the Attorney General and the Attorney General ultimately retains discretion with respect to the distribution of any proceeds from a successful forfeiture.

In light of the above, unless the continued detention of the property can be justified by police pursuant to the relevant provisions of the *Criminal Code of Canada* and/or the *Provincial*

*Offences Act* and/or the Attorney General steps in with an application under the *Civil Remedies Act*, the law requires that the property be returned to its owner.

In this latter regard, it must be noted that there may be a variety of ownership interests in property that is of significant value, such as a vehicle. Financing or leasing arrangements may dictate that the legal ownership of the property remains with the lender, notwithstanding that day-to-day possession of the vehicle resides with the operator.

While the City made property available to the police for the storage of the vehicles, the vehicles remain under the custody of the police, not the City. Furthermore, neither the emergency orders issued by the Federal Government, nor those enacted by the Province, give to the City any right to take possession of and sell property seized by law enforcement authorities.

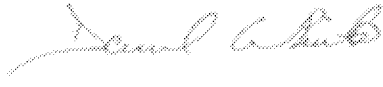
To the extent that a vehicle was seized by police pursuant to the Provincial Emergency Regulation O. Reg. 71/22, pursuant to section 5.1, the cost of the removal, detention and storage constitute a debt payable by the owner or operator of the vehicle, which can be recovered as a lien under the *Repair and Storage Lien Act*.

In the event that the impounded vehicles are abandoned in police custody, or the owners refuse to pay the costs of the removal, care and storage of the vehicle, there are rights under Part III of the *Repair and Storage Liens Act* to sell the vehicle, after giving notice to the owner and other interested parties. The monies from the sale, after paying for the reasonable expenses of selling the article and the costs of the seizure, will be applied to lien claimants and secured creditors. Any remaining balance would be paid to the owner.

It should be noted that any costs arising under these provisions were incurred by police, and not the municipality. Appreciating always their separate legal status, the resulting debt would therefore be payable to the Police Services Board (or such other body in the event that the removal of the vehicle was carried out by another law enforcement authority) and not to the City of Ottawa.

As mentioned in my earlier memo of February 7, 2022, Section 12 of the *Emergency Management and Civil Protection Act* creates a right of action against any person who caused an emergency for the recovery of money and costs expended by a municipality or local board in connection with the emergency. That said, the commencement of such a claim does not, itself, vest in the municipality the right to seize and sell the vehicles and property that are currently in police custody. While the vehicles might constitute an asset available to satisfy a possible future judgment, such as through the issuance by the court of a writ of seizure and sale, the mere commencement of an action does not extinguish the existing ownership rights in the property. Furthermore, as noted, there may be competing legal interests in the assets of the defendants that could only be determined through further legal processes. With respect to a civil action, the benefits and risks of same can be evaluated as further information comes to light as to the costs expended, the other compensation available, and the anticipated prospects of success in recovering from the potential defendants.

Based on the above, I am of the view that there currently exists no legal authority in the City of Ottawa available to effect the seizure and sale of any vehicle or other property seized by police as part of their operations in relation to the recent protests.

A handwritten signature in cursive script, appearing to read "David White".

David White

DGW/lk

cc Senior Leadership Team